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No. 85-147 (2)

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

SOUTHWEST CHEMICAL SERVICES, INC.

Petitioner,

v.

THE SUPERIOR COURT OF MARICOPA COUNTY AND THE HON. HOWARD V. PETERSON, A JUDGE THEREOF; ARIZONA PUBLIC SERVICE COMPANY; MID-MOUNTAIN CONTRACTORS, INC.; AND SUSAN J. SMITH,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Respondents Arizona Public Service Company, Mid-Mountain Contractors, Inc., and Susan J. Smith respectfully request that the Court decline to grant review of the Petition for a Writ of Certiorari to the Supreme Court of Arizona.[1]

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[1]Arizona Public Service Company is a subsidiary of AZP Group, Inc., as are El Dorado Investment Company, Energy Development Company and Malapai Resources Company. APS Fuels Company, Inc., APS Finance Company N.V. and Bixco, Inc. are subsidiaries of Arizona Public Service Company. Mid-Mountain Contractors, Inc. is now known as Beatt Equipment Company. It has no parent companies, subsidiaries or affiliates.

QUESTIONS PRESENTED

1. Is a state supreme court's refusal to accept a discretionary writ a final judgment for purposes of 28 U.S.C. §1257?

2. Is due process satisfied when a forum court with an especial interest in adjudicating the claim asserts personal jurisdiction over a nonresident defendant that manufactures and places into the stream of commerce an allegedly unreasonably dangerous and defective product in such a manner that on numerous occasions large quantities of the product are shipped directly from the defendant to the forum state where the injury occurs?

3. Is due process met when a plaintiff goes beyond the mere allegations of the Complaint and provides the Court with numerous documents, affidavits and deposition excerpts, all of which support the propriety of asserting personal jurisdiction over a nonresident defendant?

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STATEMENT OF THE CASE

This Brief in Opposition is filed jointly by Arizona Public Service Company (hereinafter "APS"), Mid-Mountain Contractors, Inc. (hereinafter "Mid-Mountain") and Susan J. Smith, named Respondents. APS and Susan J. Smith are plaintiffs in two related cases in the courts below. Mid-Mountain is a defendant in the Smith case. APS is also a defendant in the Smith case.

An understanding of the facts surrounding the underlying actions is necessary because the Petitioner has framed the questions presented in its Petition for Certiorari using an incomplete and inaccurate factual statement. This case involves polyethylene pipe which was utilized for the underground transmission of natural gas. In the early 1970's, Arizona Public Service Company installed approximately 40,000 service lines of this particular polyethylene pipe, type PE 3306, which would transmit natural gas to its customers.

As a consequence of two tragic natural gas explosions, and subsequent comprehensive testing of the pipe, APS concluded that this PE 3306 pipe was defective. Because of the unreasonable danger created by the defective pipe, APS made a decision, in the interest of public safety, to replace the 40,000 services and eliminate the hazardous conditions created by the pipe and the resins from which it was made.

APS brought the initial underlying action against various defendants who manufactured and designed this PE 3306 pipe. These defendants include the Atlantic Richfield Company (hereinafter "ARCO"), who designed and manufactured the resin, Super Dylan 7000 Orange, from which the pipe was made. Technically, the resin was designed and manufactured by ARCO's predecessors in interest, primarily Sinclair Koppers Company. The polyethylene resin used in Super Dylan 7000 Orange was produced at Sinclair Koppers' Port Arthur, Texas plant in the form of natural colored pellets. Sinclair Koppers then sent the pellets to Petitioner, Southwest Chemical Services, Inc. (hereinafter "Southwest Chemical"), also in Texas. Southwest Chemical then added

an orange cadmium pigment (Harshaw 1513), an ultraviolet stabilizer (UV-531), and an antioxident (Santonox) to the resin. These colorants and additives were usually blended in a master batch. Southwest Chemical furnished the masterbatch which was added to the base resin supplied by Sinclair Koppers. Southwest Chemical also blended or compounded the base resin or feedstock with the masterbatch. This mixing or compounding process also includes recutting the resin into pellets.

Much of the manufacturing performed by Southwest Chemical was pursuant to instruction from Sinclair Koppers. Sinclair Koppers also regulated much of the quality control of the resins compounded by Southwest Chemical. However, Southwest Chemical also performed quality control testing at its own facility.

One decision which was made solely by Southwest Chemical was the type of compounding process which Southwest Chemical would use. There are two different processes. One is the Banbury compounding process, and the other is the extruder compounding process. Mr. Love, of Southwest Chemical, has testified that the Banbury compounding process gave better dispersion of the materials. However, the compounding costs are higher when the Banbury process is used. Even though the Banbury process gives a better dispersion of materials, only two of the ten lots of resin which were received in Arizona from Southwest Chemical were compounded on the Banbury machine. According to testimony from Mr. Love, the choice regarding which process to use was that of Southwest Chemical alone.

The resin, Super Dylan 7000 Orange, was then shipped from Southwest Chemical to The Swanson Company (hereinafter "Swanson") in Arizona. Swanson is another defendant in the underlying actions. On occasion, Swanson would pick up the resin from Southwest Chemical in Texas. Southwest Chemical shipped approximately ten lots of resin to Swanson in the early 1970's which accounted for over 500,000 pounds of resin. Swanson then extruded the resin

into over 2,000,000 feet of PE 3306 pipe which was then purchased by APS. Respondent Mid-Mountain installed some of the pipe for APS.

APS brought its lawsuit to recover damages for property damage to its pipe, its gas distribution system, and to its supply of gas; for the cost of the repair and replacement of the 40,000 service lines; for the cost of increased leak surveys and extensive testing; and for monies paid to third parties, including Susan J. Smith, for direct property damage, personal injury and death caused by the defective pipe and resins. Respondent Susan J. Smith, instituted a second action to recover for injuries sustained in an explosion allegedly caused by the defects in the pipe and the resins from which it was made.

The above-stated facts were presented to the trial court in opposition to Southwest Chemical's Motions to Dismiss for Lack of Personal Jurisdiction. The facts were supported by excerpts of deposition transcripts, affidavits from experts, and documentation produced by the various parties and subpoenaed from Southwest Chemical prior to its being named in the lawsuit. [2]

The trial court denied Southwest Chemical's Motions. The Arizona Supreme Court then declined to accept jurisdiction of Southwest Chemical's Petitions for Special Action on that issue.

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[2] The Clerk of the Maricopa County Superior Court has been requested to certify and transmit the referenced documents pursuant to Rule 19, Rules of the United States Supreme Court.

REASONS FOR DENYING THE PETITION

I. AS NO FINAL JUDGMENT UNDER 28 U.S.C. §1257 EXISTS IN THIS CASE, THIS COURT MAY NOT ASSERT ITS JURISDICTION BY ACCEPTING PETITIONER'S WRIT OF CERTIORARI.

Jurisdiction does not properly lie with this Court. The judgment which is the subject of the Petition for Certiorari is an Order of the Arizona Supreme Court entered May 1, 1985. (See Appendix to Petition for Certiorari). Pursuant to 28 U.S.C. §1257 this Court may only review final judgments or decrees rendered by the highest court of a state in which a decision could be had.

The test of "finality" required by 28 U.S.C. §1257 is whether the record shows that the order of the appellate court has in fact fully adjudicated rights, and that the adjudication is not subject to review further by a state court. *Department of Banking, State of Nebraska v. Pink,* 317 U.S. 264, 63 S. Ct. 233, 87 L. Ed. 254, *rehearing denied* 318 U.S. 802, 63 S. Ct. 850, 87 L. Ed. 1166 (1942). *See also, Gospel Army v. City of Los Angeles,* 331 U.S. 643, 67 S. Ct. 1428, 91 L. Ed. 1662 (1947).

The Arizona Supreme Court's Order is not a final judgment within the meaning of 28 U.S.C. §1257. The Petitioner requested the Arizona Supreme Court to accept jurisdiction of two Petitions for Special Action challenging the trial court's denial of Southwest Chemical's Motions to Dismiss for lack of personal jurisdiction. In Arizona, special actions are the vehicle for relief which was previously obtained by writs of certiorari, mandamus or prohibition. Special actions are not available where there is an equally plain, speedy, and adequate remedy by appeal. 17A *Ariz. Rev. Stat. Ann.,* Rules of Procedures for Special Actions, Rule 1.

The decision of an Arizona court to accept jurisdiction over a special action is highly discretionary. *King v. Superior Court,* 138 Ariz. 147, 673 P.2d 787 (1983). Most im-

portantly, a refusal by an Arizona appellate court to assert jurisdiction over a special action does not preclude the petitioning party from later raising the same legal issues on appeal. Indeed, the Arizona Supreme Court in this case did not render a final judgment on the merits, but simply declined to accept jurisdiction and review the issues presented. Petitioner still has available a remedy through appeal to the Arizona Supreme Court.

The procedural posture of this case is very different from that in the cases cited by Petitioner. In *Calder v. Jones*, 465 U.S. _____, 104 S.Ct. 1482 (1984) the Court held that a state court denial of a due process challenge to personal jurisdiction is a reviewable final judgment. In that case, however, the state appellate court had reviewed the personal jurisdiction question and made a final judgment on that issue. This Court pointed out that the judgment of the appellate court was not subject to further review by the state courts.

Petitioner also likens the procedural posture of the case at bench to *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), where the trial court denied petitioners motion to dismiss for lack of *in personam* jurisdiction. The Oklahoma Supreme Court denied petitioner's writ of prohibition only after considering the issue on the merits and handing down an opinion detailing its analysis and conclusions. *World-Wide Volkswagen Corp. v. Woodson*, 585 P.2d 351 (Okla. 1978). There, the highest court of the state had rendered a final judgment which was not subject to further review in that state court.

In the case at bench the Arizona Supreme Court declined to review the issue at this time. Petitioner is not left without a remedy in state court. Avenues are still available to Petitioner through the regular course of appeal. Therefore, the Arizona Supreme Court judgment is not "final" as required by 28 U.S.C. §1257 and the Petition for Certiorari should be denied.

II. THE QUESTIONS PRESENTED BY THE PETITIONER ARE NOT SUPPORTED BY THE FACTS OF THIS CASE WHICH THE ARIZONA COURTS REVIEWED AND FOUND SUFFICIENT TO SUPPORT THE PROPER ASSERTION OF JURISDICTION OVER PETITIONER.

A.

Petitioner initially asks this Court to address the question whether due process is violated when personal jurisdiction is asserted over a nonresident defendant which provided services to the nonresident manufacturer, but did not participate in or influence the marketing or distribution of the manufacturer's product in the forum state. That question, while perhaps worthy of discussion in another setting, does not address the factual situation presented by this case.

First, Southwest Chemical, for essentially the first time on appeal, claims they merely provided a service, rather than a product. This contention completely ignores Arizona's product liability statute, under which Southwest Chemical is clearly a manufacturer. 4 *Ariz. Rev. Stat. Ann.* §12-681 defines a manufacturer as:

> [A] person or entity who designs, *assembles, fabricates,* produces, constructs or *otherwise prepares* a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or in significant part by the manufacturer or a seller owning the manufacturer in whole or significant part. (Emphasis added).

Southwest Chemical's involvement in the total manufacture of Super Dylan 7000 Orange included adding various ingredients to the raw pellets, mixing the new ingredients, or masterbatch, with the feedstock of clear resin pellets in a heat process and recutting the pellets. They then would package or bag the pellets. Thus Southwest Chemical "assembled" and "fabricated" the product and is considered a manufacturer of a product under Arizona law. It is irrele-

vant at this point that the product was labeled as that of Sinclair Koppers (ARCO). To classify themselves as merely a provider of services is an inaccurate characterization.

Additionally, as indicated in the Statement of the Case, Southwest Chemical did provide independent input in the manufacture of the product. The decision as to which type of compounding process to use, the Banbury type process or the extrusion type process, was a decision made by Southwest Chemical alone. In response to Petitioner's Motions to Dismiss for lack of jurisdiction, Respondents provided an affidavit to the Court by an expert in the field of polymers, stating that improper compounding could contribute ultimately to defects in pipe made from the resin compound and that improper and inconsistent dispersion could cause the pipe to be defective.

Next, the facts do not substantiate Petitioner's assertion that it did not participate in or influence the marketing or distribution of the product in the forum state. By their own admission, Southwest Chemical does business with all the major chemical and petroleum companies. Southwest Chemical cannot logically expect that the products in whose manufacture it participates will remain solely in the state of Texas. A number of the requisition forms provided to Southwest Chemical by Sinclair Koppers indicate that the resin is to be shipped to The Swanson Company or will be picked up by The Swanson Company.

In fact, ten lots of the resin were sent directly from Southwest Chemical Services to Swanson in Arizona. This occurred over a four year period and involved several hundred thousand pounds of resin.

This Court's most recent pronouncement on personal jurisdiction in product liability cases is instructive. In *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S. at 297-98, 100 S. Ct. at 567, this Court held:

> [I]f the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or dis-

> tributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. [3]

In this instance, the defective product was placed in the stream of commerce at Southwest Chemical, destined directly for the forum state of Arizona. This was not an isolated instance, nor a fortuitious circumstance, but the product was made for Swanson in Arizona and was sent directly there.

Furthermore, in its rendition of the facts Petitioner fails to mention any facts in support of the forum state's interest. In its cry that due process has been violated, Petitioner omits any reference to this Court's recent pronouncements in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. _____, 104 S. Ct. 1473 (1984) and *Calder v. Jones, supra,* which indicate that the state's interest is part of the due process equation. Respondents cited these cases to the Arizona courts, but Petitioner neither distinguished nor refuted them. Petitioner has not attempted to distinguish or refute the application of these cases because the forum state of Arizona has an especial interest in exercising jurisdiction in this case. The plaintiff in the initial underlying action, APS, is a state-regulated utility. The plaintiff in the second action, Susan J. Smith, was an Arizona resident at the time of her accident.

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[3] This Court most recently addressed the issue of *in personam* jurisdiction in *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174 (1985). That case essentially followed the *World-Wide Volkswagen* analysis. *Burger King* involved a franchise agreement rather than the interstate transportation of goods. The facts of *World-Wide Volkswagen* are much more analogous to the case at bench; thus Respondents frame their response to Petitioner's argument with reference to *World-Wide Volkswagen*.

One of the defendants is an Arizona corporation. The events from which this lawsuit arose all occurred in Arizona. Approximately 40,000 service lines of gas pipe were installed in Arizona and were later removed and replaced after it was determined the defects in the pipe made it too dangerous to transport natural gas to Arizona residents. Explosions occurred in Arizona which killed and maimed Arizona residents and damaged property in Arizona. Accordingly, this case has affected or may affect a large number of Arizona citizens.

Other than the fact that Southwest Chemical is a Texas corporation, the Texas Court has absolutely no interest in this case. As reiterated in *Keeton v. Hustler Magazine, Inc.*, *supra*, 465 U.S. at _____, 104 S. Ct. at 1479:

> A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

Clearly, Arizona has a strong interest in adjudicating this claim as well as an interest in preventing piecemeal litigation and possibly conflicting adjudications as may occur if Respondents were required to litigate their case against Southwest Chemical in Texas.

B.

Petitioner's second framing of the due process argument is equally without merit. Petitioner argues that this Court has never entertained the question whether a state may assert jurisdiction over a nonresident "upstream" manufacturer. However, under any interpretation, the *World-Wide Volkswagen* analysis supports the Arizona Court's assertion of personal jurisdiction over Southwest Chemical. In *World-Wide Volkswagen*, there was no showing that any automobile sold by World-Wide, the regional distributor, or Seaway, the retail dealer, had ever entered the forum State of Okla-

homa with the single exception of the vehicle involved in that case. 444 U.S. at 289. In the instant case it is uncontested that ten different shipments of the resin which Southwest Chemical compounded were sent directly to Swanson in Arizona. The shipments took place over an approximately four year period and accounted for hundreds of thousands of pounds of resin.

While the merits of Petitioner's argument will be more fully briefed only if this Court accepts jurisdiction, it should be noted that Southwest Chemical is essentially claiming the limits of jurisdiction for "upstream" defendants, as they characterize themselves, should be more narrowly drawn than for "downstream" defendants. This reasoning is neither persuasive nor logical. In *World-Wide Volkswagen*, only the retail dealer and the regional distributor appealed the state court's assertion of personal jurisdiction. The manufacturer and importer did not seek review of the state court's determination. Arguably, jurisdiction over those "upstream" defendants was properly asserted. A corporation which delivers its products into the stream of commerce with the expectation that the product will be purchased or used in the forum state should not find it unfair to defend suit in that state. *World-Wide Volkswagen v. Woodson, supra; Hedrick v. Daiko Shoji Co. Ltd. Osaka,* 715 F.2d 1355 (9th Cir. 1983); *Northern Propane Gas Co. v. Kipps,* 127 Ariz. 522, 622 P.2d 469 (1981).

In *World-Wide Volkswagen*, this Court recognized and distinguished among the various entities that may compose a distribution system of a product. The two defendants in that case who were not subject to Oklahoma jurisdiction were at the downstream end of the automobile distribution system. The scope of the foreseeable market served by those particular defendants and the benefits those defendants may have derived from the sale of the product was limited. In contrast, the foreseeable market is generally broader for manufacturers and primary distributors of products who are at the beginning of a distribution system. These entities serve,

directly or indirectly, and derive economic benefit from, a wider market. These manufacturers and distributors purposely conduct their activities to make their product available in as many forums as possible. Thus, a manufacturer or primary distributor may be subject to a certain forum's jurisdiction when a secondary distributor or retailer is not. This is so because the manufacturer and primary distributor have intended to serve a broader market and have derived benefits from serving that market. *Nelson By Carson v. Park Industries, Inc.*, 717 F.2d 1120 (7th Cir. 1983), *cert. denied*, 104 S. Ct. 1277 (1984). *See Hendrickson v. Reg O. Co.*, 657 F.2d 9 (3rd Cir 1981); *De James v. Magnificence Carriers Inc.*, 654 F.2d 280 (3rd Cir.), *cert. denied*, 454 U.S. 1085 (1981); *Poyner v. Erma Werke GMBH*, 618 F.2d 1186 (6th Cir.), *cert. denied*, 444 U.S. 841 (1980).

This rationale was succinctly set forth in *Gray v. American Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761, 766 (Ill. 1961) where the Court stated:

> With the increasing specialization of commercial activity and the growing interdependence of business enterprises, it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from [their] laws is an indirect one, however, does not make [those laws] any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his product to say that the use of such products in the ordinary course of commerce is sufficient contact with [such states] to justify a requirement that he defend [there].

See also Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893, 80 Cal. Rptr. 113, 458 P.2d 57 (1969). Simply because the benefit Southwest Chemical derived from the laws of the State of Arizona may be an indirect one does not make it any less essential to the conduct of Southwest Chemical's business. The use in Arizona of the product manufactured by Southwest Chemical surely generated gross income for Southwest Chemical. Thus, Southwest Chemical has "pur-

posely availed itself of the privilege of conducting activities" within Arizona, thus "invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-1240, 2 L. Ed.2d 1283 (1958). Southwest Chemical, as a manufacturer of a product bound for ports outside of Texas, in this instance Arizona, has purposefully directed its commercial efforts toward the residents of other states, including Arizona. Thus, under the facts of the case it is not unfair to require Southwest Chemical to defend itself in Arizona.

III. ARIZONA LAW COMPORTS WITH DUE PROCESS REQUIREMENTS AND REQUIRES THE PLAINTIFF TO CARRY THE BURDEN OF ESTABLISHING THAT JURISDICTION IS PROPER; RESPONDENTS MET THAT BURDEN AND JURISDICTION OVER PETITIONER WAS PROPERLY ASSERTED.

Petitioner asks this Court to determine if due process requires that the plaintiff prove the requisite jurisdictional facts when a defendant challenges personal jurisdiction by moving to dismiss, or may the plaintiff establish jurisdiction merely by the allegations of the complaint. That question is not supported by the facts of the case before the Court. As noted in the Statement of the Case and herein, Respondents did not rest on the allegations of their Complaints in responding to Petitioner's Motions to Dismiss, but provided in addition numerous documents, deposition transcript exerpts, and affidavits which supported the assertion of jurisdiction.

The Arizona Court utilized the Arizona standard which states that when a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff has the burden of establishing that such jurisdiction is proper. *G.T. Helicopters, Inc. v. Helicopters, Ltd.*, 135 Ariz. 380, 661 P.2d 230 (App. 1983); *Coast to Coast Marketing Co., Inc. v. G & S Metal Products Company, Inc.*, 130 Ariz. 506, 637 P.2d 308 (App. 1981). Respondents met that burden of proof. Res-

pondents supplied documents which indicated that Southwest Chemical participated in the manufacture of the product, the pipe resin for PE 3306 pipe; documents which indicated that the product was bound for The Swanson Company; documents which indicated that the product was shipped directly from Southwest Chemical to The Swanson Company in Arizona; documents which indicated that at least ten shipments were sent to Arizona over a four-year period and that these shipments totalled hundreds of thousands of pounds of resin. Respondents also provided an affidavit from an expert in the field of polymers which indicated, *inter alia*, the compounding process is an important step in the overall manufacturing process of a product such as Super Dylan 7000 Orange, and improper compounding can contribute ultimately to defects in pipe made from the resin compound. In addition, improper and inconsistent dispersion could cause the pipe to be defective. Already on file with the Court was another affidavit from the same polymers expert which stated the resin was dangerous and defective prior to the time it reached Swanson. Deposition transcript exerpts were also provided to the Arizona courts. These transcripts indicated Southwest Chemical's involvement in the manufacturing and distribution of the Super Dylan 7000 Orange resin.

Petitioner claims there is need for a statement from this Court that the party asserting jurisdiction must prove the requisite jurisdictional facts. Southwest Chemical contends the proper standard is that set forth in *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280 (9th Cir. 1977) which places the burden of establishing that jurisdiction exists upon the party seeking to invoke jurisdiction. Respondents submit the standard Petitioner seeks is that articulated and employed by the Arizona Courts. "Once the defendant has moved for dismissal for lack of jurisdiction, the plaintiff has the burden of establishing that jurisdiction is proper." *G.T. Helicopters, Inc. v. Helicopters Ltd., supra*, 135 Ariz. at 382, 661 P.2d. at 232.

In any event, this Court recently set forth the burden of proof to be utilized in determining if jurisdiction is proper. Once minimum contacts have been established by the party asserting jurisdiction the burden shifts to the party seeking to avoid jurisdiction to prove that the imposition of jurisdiction is unfair. That is, "where a defendant who purposely has directed his activities at forum residents seeks to defeat jurisdiction he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King Corp. v. Rudzewicz*, 105 S.Ct. 2174, 2185 (1985). In that case this Court also stated:

> [C]ourts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." ... These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.

Id., 105 S.Ct. at 2184. (Citations omitted). An application of the above factors to the case at bench indicates that this is the type of case where a lesser showing of minimum contacts is required.

There is no need for an additional statement by this Court with respect to the burden of proof necessary when personal jurisdiction is challenged. Under both the Arizona standard and the *Burger King* standard, jurisdiction over Petitioner was properly asserted by the Arizona courts.

CONCLUSION

For the above reasons, Respondents Arizona Public Service Company, Mid-Mountain Contractors, Inc., and Susan J. Smith, respectfully request that this Court decline to exercise jurisdiction in this matter and refuse to issue a Writ of Certiorari to the Supreme Court of Arizona.

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CERTIFICATE OF SERVICE

STATE OF ARIZONA
County of Maricopa
} ss.

JOHN CARTER GEMMILL, being first duly sworn upon his oath, deposes and says that he is a member of the Bar of this Court and one of the counsel of record for Respondents in this cause; that on this __ day of August, 1985, he mailed three (3) copies of Respondent's Brief In Opposition to the Petition in this cause by depositing same in the United States mail, first-class postage prepaid, to:

Jefferson L. Lankford
JENNINGS, STROUSS & SALMON
111 West Monroe, Suite 1700
Phoenix, Arizona 85003

and that he also mailed forty (40) copies of the Respondent's Brief In Opposition to the Petition to the Clerk of this Court, first-class postage prepaid; all in compliance with Rule 28, Rules of the Supreme Court.

_____
John Carter Gemmill

SUBSCRIBED AND SWORN to before me this __day of August, 1985.

_____
Notary Public

My Commission Expires:

_____